Filed 7/21/09 Marriage of Unger and Eidman-Unger CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of EDMUND UNGER and JENNY EIDMAN-UNGER.	G040768
EDMUND UNGER, Appellant, v. JENNY EIDMAN-UNGER, Respondent.	(Super. Ct. No. 02FL002563) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Nancy A. Pollard, Judge. Affirmed.

Law Offices of Jeffery L. Heath and Jeffery L. Heath for Appellant.

Baron & Behrndt and Hassan Gorguinpour for Respondent.

* * *

Appellant Edmund Unger (father) appeals from a postjudgment order correcting an earlier minute order that had indicated he would *receive* child support from his ex-wife, respondent Jenny Eidman-Unger (mother). The court corrected the order nunc pro tunc to indicate father would *pay* child support to mother, finding the parties' names had been transposed in a clerical error. Substantial evidence supports this finding, including the computerized DissoMaster child support calculation indicating father would pay child support to mother. We affirm.

FACTS

Father and mother obtained a judgment of dissolution in Connecticut in 2001.[1] The Connecticut court awarded joint custody and ordered father to pay child support of $291 per month to mother. Father and mother separately moved to California, and father registered the dissolution judgment with the court. Father, a serviceman, was deployed overseas in 2004. The court modified the child support amount to $600 per month while he was away, to be reduced to $356 per month upon his return. Father returned in September 2004. Mother moved to modify the child support amount in May 2005.

The court issued a minute order modifying the child support amount on November 1, 2005. The minute order attached a copy of a DissoMaster data screen showing the computerized child support calculation.[2] The calculation indicated a net income for father of $3,293 per month and for mother of $1,241 per month. It further

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[1] We draw these background facts from an October 11, 2007 statement of decision, of which the court apparently took judicial notice. Father augmented the record on appeal with this decision without objection from mother.

[2] "The DissoMaster is a privately developed computer program used to calculate guideline child support under the algebraic formula required by [Family Code] section 4055." (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1227 fn. 5.)

indicated "Presumed CS" (child support) of $385 per month. It provided, "Father, payor of CS, Prop. CS." A handwritten notation at the bottom of the calculation showed an arrow pointing from "Unger" (father) to "Eidman-Unger" (mother). But the minute order itself stated, "Court orders Respondent/Mother to pay to Petitioner/Father as and for child support, the sum of $385.00, payable ½ on the first and fifteenth of each month . . . ."

Mother moved to correct the minute order in December 2007. She contended the court had made a clerical error in its minute order by transposing the parties' names. She stated she discovered the mistake when the Department of Child Support Services (DCSS) accused her of failing to pay child support. Mother served her motion on the DCSS, which filed a response stating it took "no position" on her motion. Father filed no response and did not appear at the hearing.

The court granted the motion on January 11, 2008. It ordered the November 1, 2005 minute order corrected nunc pro tunc to provide that father would pay mother child support of $385 per month.

Father moved to set aside the order granting mother's motion. He claimed he was not personally served with the motion to correct, though he conceded DCSS had provided him with a copy. Father stated he did not respond to the motion because he and his lawyer thought DCSS would oppose it for him.

Father also set forth his opposition to correcting the November 2005 minute order. Father contended the minute order was correct and the DissoMaster was wrong. He claimed the DissoMaster failed to account for the actual custody division as of November 2005, which favored father, and indicated a lesser monthly income for mother than she had acknowledged in her income and expense declaration.[3]

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[3] In her income and expense declaration, mother disclosed a monthly income approximately twice that shown in the DissoMaster calculation, but she also stated she had only started her job in June of that year.

The court denied father's motion to set aside the order of correction, finding he had actual notice of mother's motion to correct. The court noted that even if it did vacate the order of correction for lack of notice, it would reenter it on the merits.[4] It found the minute order contained a clerical error regarding the parties' names. The court further found father's challenges to the court's underlying child support calculation in November 2005 were untimely.

DISCUSSION

"The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgments or orders as entered, so as to confirm to the judgment or orders directed . . . ." (Code Civ. Proc., § 473, subd. (d).) "Regardless of the lapse of time or finality of judgment a court may, upon motion of a party or upon its own motion, correct a clerical mistake in its judgment, whether the mistake was made by the clerk, counsel or the court itself. [Citations.] 'Where the judgment as signed does not express the actual judicial intention of the court, but is contrary thereto, the signing of such a purported judgment is a clerical error rather than a judicial one.'" (*In re Marriage of Sheridan* (1983) 140 Cal.App.3d 742, 746 (*Sheridan*).)

Courts often review an order correcting clerical error for an abuse of discretion. (See, e.g., *Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1035.) This deferential standard makes sense when the judicial officer who corrects the clerical error was also presiding when the error was made. "It is primarily for the trial judge to determine whether the judgment as written expressed his decision, and in reviewing the

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[4] Because father was able to assert his opposition on the merits, we reject his claim of improper service. (Cf. *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7-8 [deficient notice waived when party opposes motion on the merits].)

nunc pro tunc order his determination is entitled to substantial consideration." (*Miller v. Wood* (1963) 222 Cal.App.2d 206, 211.)

But where one judicial officer must decide whether another's order or judgment contains a clerical error, review should be for substantial evidence.[5] Courts have applied this standard of review to orders correcting clerical errors, though not necessarily when different trial judges were involved. (See, e.g., *Bree v. Beall* (1981) 114 Cal.App.3d 650, 656.) "A finding, express or implied . . . that a clerical error exists in the judgment in question is, if supported by substantial evidence, a conclusive finding which binds an appellate court on review." (*Meyer v. Porath* (1952) 113 Cal.App.2d 808, 811-812 (*Meyer*).)

Substantial evidence supports the finding that the November 2005 minute order contained a clerical error. The minute order contains the same amount of monthly child support ($385) as indicated by the attached DissoMaster calculation. But while the minute order indicates mother should pay child support to father, the DissoMaster shows father's monthly income exceeded mother's monthly income and unambiguously indicates "Father, payor of CS, Prop. CS." And a handwritten notation at the bottom of DissoMaster calculation shows an arrow pointing from "Unger" (father) to "Eidman-Unger" (mother). Moreover, the record shows father had been ordered to pay child support to mother already, and it was mother who had moved to modify the support amount. This evidence sufficiently shows an "'actual judicial intention of the court'" to have father pay child support to mother — not vice versa. (*Sheridan*, *supra*, 140 Cal.App.3d at p. 746.)

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[5] Father contends the court should have assigned his set aside motion to the judge who issued the November 2005 minute order. But "clerical error may be proved by any competent evidence and it is not essential that the same judge who made the initial ruling preside over or appear at the hearing on the correction." (*In re Marriage of Mercado* (1977) 75 Cal.App.3d 701, 704, fn. 3.) Father wrongly relies upon inapt cases holding one judge must preside over all phases of trial. (See, e.g., *European Beverage, Inc. v. Superior Court* (1996) 43 Cal.App.4th 1211, 1214-1215.)

Because the November 2005 minute order contained a clerical error transposing the parties' names, the court properly corrected it nunc pro tunc. (*Sheridan, supra,* 140 Cal.App.3d at pp. 745-746 [correcting judgment to reflect oral pronouncement]; see also *Meyer*, *supra*, 113 Cal.App.2d at pp. 811-812 [correcting judgment based on erroneous property survey to conform to subsequent survey]; cf. *Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 259 [relieving party of excusable typographical error by which it offered to have judgment entered "'against'" it rather than "'in favor of'" it].)

DISPOSITION

The postjudgment order is affirmed. Mother shall recover her costs on appeal.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.